IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 554 of 2007
In SPECIAL CIVIL APPLICATION No. 1391 of 2006
To
LETTERS PATENT APPEAL No. 564 of 2007
in
SPECIAL CIVIL APPLICATION NO.1401 OF 2006

WITH

CIVIL APPLICATION NO.5613 OF 2007
IN
LETTERS PATENT APPEAL NO.554 OF 2007

TO

CIVIL APPLICATION NO.5623 OF 2007
IN
LETTERS PATENT APPEAL NO.564 OF 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	NO
5	Whether it is to be circulated to the civil judge ?	NO

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CENTRAL SALT AND MARINE CHEMICAL RESEARCH INST. - Appellant(s)
Versus
CHANDUBHAI CHHANABHAI BARAIYA & 10 - Respondent(s)

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Appearance :
MR RS SANJANWALA for Appellant
NOTICE SERVED BY DS for Respondent(s) : 1 - 11.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 25/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. Being aggrieved by the judgment and order dated 31st January, 2006 passed by the learned Single Judge in the above numbered Special Civil Applications, to the extent of the observation made in paragraph (3) thereof, the appellant, a Research Institute, has preferred these appeals under Clause 15 of the Letters Patent.

2. In each of these appeals, notice for final disposal had been issued on 25th April, 2007 and the same was made returnable on 8th May, 2007. Thereafter, the appeals have been adjourned from time to time, however, despite service of notice, the respondents have not entered appearance. Hence, the appeals have been taken up for final hearing today and are disposed of by this common judgement and order.

3. The case of the respondents/original petitioners, as stated in the petitions, is that they were working with the appellant as sweepers, gardeners, watchmen etc. since 15 to 25 years. It was the case of the respondents that the appellant was granting contracts to various contractors for rendering services as sweepers, gardeners, watchmen etc. for a fixed period of 1 to 3 years, and that, the respondents were engaged under such contract system. It was further the case of respondents that though the contractors would change from time to time, the workers remained the same. That, on or about 27th January, 2006, the respondents had submitted applications before the Labour Commissioner for regularization of their services, pursuant to which the concerned officer of the appellant informed them that they would be relieved from services with effect from February, 2006. That, the respondents approached the new contractor for continuing them in service, but were informed that the request cannot be acceded to as the appellant had instructed him not to do so. Being aggrieved by the oral termination of their services with effect from 1st February, 2006, the respondents approached this Court by way of the above numbered writ petitions praying for a direction against the appellant to continue them in the service of its establishment.

4. It appears that the aforesaid petitions were filed on or about 28th January, 2006 and were listed for hearing on 31st January, 2006. By a judgement and order of even date, the petitions were disposed of on the ground that the relief prayed for in the petitions cannot be granted by this Court under Article 226 of the Constitution of India, and that, the appropriate remedy for the respondents was to raise an industrial dispute. However, while relegating the respondents to the alternative remedy under the provisions of the Industrial Disputes Act, 1947, the learned Single Judge has made an observation to the effect that if a fresh contract is given to a new contractor, a condition shall be included in the contract to the effect that the respondents shall be absorbed in their respective cadre. It is this observation made by the learned Single Judge while disposing of the petitions that has given rise to the present appeal.

5. Mr.R.S.Sanjanwala, learned advocate for the appellant has assailed the impugned judgement and order on the ground that, considering the tenor of the observation made by the learned Single Judge, the same amounts to a direction, whereby in effect and substance, the relief claimed for by the respondents has been granted, that too, while dismissing and disposing of the said petitions on the ground of maintainability.

It was submitted that even otherwise no relief was claimed in the petitions for insertion of a condition in the contract to be entered between the appellant and the contractor. Thus, the learned Single Judge had clearly erred in making such an observation which has resulted into granting relief that was not claimed in the petitions and had thereby erred in going beyond the scope of the petition itself. It was further submitted that the impugned judgement and order was violative of the principles of natural justice as the aforesaid observation had been made while disposing of the petitions, without hearing the appellant. It was, therefore, submitted that the impugned judgement and order insofar as the same observes that a condition be inserted in the fresh contract which may be given to a new contractor, be quashed and set aside, and that, the appeals be allowed with costs.

6. As can be seen from the impugned judgement and order, the learned Single Judge was of the view that the relief claimed for in the petitions cannot be granted in exercise of powers under Article 226 of the Constitution of India. Therefore, the respondents were relegated to the alternative remedy available under the provisions of the Industrial Disputes Act in respect of the grievances voiced in the petitions. However, while relegating the respondents to the alternative remedy, the

learned Single Judge has made observations that adversely affect the appellant, as noted hereinabove. From the language employed in the order, it is apparent that though termed as an observation, it is in the nature of a mandate.

7. Upon perusal of the averments as well as relief prayed for in the petitions, it is evident that no such relief seeking insertion of such a condition in the fresh contract which may be given to a new contractor has been prayed for. The learned counsel for the appellant is, therefore, justified in contending that the learned Single Judge has erred in granting relief which was not prayed for and as such, was beyond the scope of the petitions.

8. Moreover, as is apparent from the facts stated hereinbefore, the writ petitions filed by the respondents herein have been disposed of on the very same day on which they were notified for hearing, without issuance of any notice to the appellant. Therefore, no order which is prejudicial to the appellant could have been passed against the appellant while disposing of the petitions. The aforesaid judgement and order, therefore, suffers from the infirmity of being in breach of principles of natural justice inasmuch as though the respondents have been relegated to avail of the alternative remedy by way of raising an industrial dispute, the rights

of the appellant have been prejudicially affected by the observation made in the order to include a condition to the effect that the respondents shall be absorbed in their respective cadre if fresh contract is given to a contractor.

9. In this context, it may be pertinent to refer to the decision of the Apex Court in the case of ***The State of Orissa v. Madan Gopal Rungta*** [AIR 1952 SC 12], wherein the Apex Court has held that Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on an application. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of the opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination, it might have made a suitable interim order for maintaining the *status quo ante*. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated

more properly in a civil suit, it could not for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution. In the opinion of the Apex Court, the language of Article 226 does not permit such an action.

10. In the case of ***G.E. Power Control India and others v. Laxmipathy and others,*** [2005(11) SCC 509], the employees of the appellant Company were challenging certain orders of transfer. The High Court had come to the conclusion that the writ petitions were not maintainable. However, it was held that the employees were entitled to seek reference under Section 10 of the Industrial Disputes Act. During the pendency of the matter before the High Court, by reason of the fact that the respondent employees did not join their transfer posts, their services were treated as at an end on the ground of abandonment of their services. In other cases relating to other companies, employers issued letters of termination. The High Court having held that the writ petition was not maintainable against the companies, went on to *inter alia* issue directions permitting the dismissed employees to join at the places of transfer. The Supreme Court held that the reasoning of the High Court was contrary to say the least. It was further held that if the High

Court had held that it was unable to grant relief in respect of orders of transfer under Article 226 of the Constitution, it certainly was not in a position to adjudicate upon the grant of relief in respect of orders of termination of service or abandonment of the service, as the case may be. Following its decision in the case of *State of Orissa v. Madan Gopal* (supra), the Supreme Court set aside the directions issued by the High Court.

11. Applying the principles enunciated by the Supreme Court in the aforesaid decisions to the facts of the present case, we are of the view that once the learned Single Judge had declined to decide the rights of the parties and had expressly held that the same should be adjudicated by raising an industrial dispute, it was not permissible to issue such further directions, as have been issued in the present case.

12. As held by the Apex Court in the decisions cited above, the existence of a right is the foundation of the exercise of jurisdiction of the Court under Article 226. The judgement under appeal shows that the learned Single Judge has decided nothing at all in respect of the rights of the parties. Therefore, in absence of any adjudication in respect of the rights of the parties, the learned Single Judge was not

justified in making the observation impugned in the appeal.

13. In the above view of the matter, apart from the fact that the judgement and order dated 30.1.2006, to the extent it is impugned in the present appeal, suffers from the basic infirmity of being violative of the principles of natural justice, it also suffers from a further infirmity, in that, the impugned observation could not have been made once the Court had declined to decide the rights of the parties. Therefore, to that extent, it cannot be sustained.

14. For the foregoing reasons, the Appeals succeed and are hereby allowed. Paragraph No.3 of the impugned judgement and order, wherein it has been observed that if fresh contract is given to a new contractor, a condition shall be included in the contract to the effect that the petitioners (respondents) shall be absorbed in their respective cadre, is hereby quashed and set aside. There shall be no orders as to costs.

15. Since the Letters Patent Appeals have been allowed, the Civil Applications do not survive and are, therefore, disposed of accordingly. Rule is discharged in each of the Civil Applications.

[A.M.KAPADIA, J.]

[HARSHA DEVANI, J.]

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